

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NEW YORK
ROCHESTER DIVISION

In re: Vincent Michael Smith,) Case No. 17-20702-PRW
) Chapter 13
Debtor(s).)

NOTICE OF MOTION

PLEASE TAKE NOTICE that a hearing will be held before the Honorable Paul R. Warren, Bankruptcy Judge, on:

June 14, 2018 at 10:00 a.m.
United States Bankruptcy Court
1220 U.S. Courthouse
100 State Street
Rochester, NY 14614

to consider the motion objecting to claim filed pursuant to F.R.B.P. 3007 and 11 U.S.C. §502 (b) (1), by George M. Reiber, Chapter 13 Trustee (the "Objecting Party") to the claim of United Consumer Financial Services (UCFS Kirby Cleaning System), (Claim #26, Court Claim #3) in this case only if a written request for a hearing is filed by the claimant as outlined below.

PURSUANT TO F.R.B.P. 9014 AND THE STANDING ORDERS IMPLEMENTING DEFAULT PROCEDURES IN ROCHESTER AND WATKINS GLEN: IF YOU INTEND TO OPPOSE THE MOTION: AT A MINIMUM YOU MUST SERVE: (1) THE MOVANT AND MOVANT'S COUNSEL, AND (2) IF NOT THE MOVING PARTY (A) THE DEBTORS AND DEBTOR'S COUNSEL; (B) IN A CHAPTER 11 CASE, THE CREDITORS' COMMITTEE AND ITS ATTORNEY, OR IF THERE IS NO COMMITTEE, THE 20 LARGEST CREDITORS; AND (C) ANY TRUSTEE. IN ADDITION, YOU MUST FILE WITH THE CLERK OF THE BANKRUPTCY COURT WRITTEN OPPOSITION TO THE MOTION NO LATER THAN THREE (3) BUSINESS DAYS PRIOR TO THE RETURN DATE OF THIS MOTION NOT WITHSTANDING THE DECEMBER 1, 2009 AMENDMENTS TO F.R.B.P. 9006(a). IN THE EVENT NO WRITTEN OBJECTION IS SERVED AND FILED, NO HEARING ON THE MOTION WILL BE HELD ON THE RETURN DATE AND THE COURT WILL CONSIDERS THE MOTION AS UNOPPOSED.

DATED this 1 day of May, 2018.
Rochester, NY

/s/ _____
George M. Reiber
Chapter 13 Trustee
3136 S. Winton Road
Rochester, NY 14623
(585) 427-7225

To: Vincent Michael Smith
Susan Duke, Esq.
Joe Francesconi, President of United Financial Services
United States Trustee

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NEW YORK
ROCHESTER DIVISION

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|-------------------------------|---|-----------------------|
| In re: Vincent Michael Smith, |) | Case No. 17-20702-PRW |
| |) | |
| |) | Chapter 13 |
| Debtor(s). |) | |

MOTION OBJECTING TO CLAIM AND SUPPORTING STATEMENT

George M. Reiber, Chapter 13 Trustee, pursuant to F.R.B.P. 3007 and 11 U.S.C. § 502 (b),
(1) moves this Court objecting to the following claim:

Claimant name: United Consumer Financial Services (UCFS Kirby Cleaning System)

Claim: #26

Amount: \$1,921.52

Court claim: #3

In support of this motion, the Trustee alleges as follows:

1. On June 29, 2017, Debtor filed a voluntary petition commencing a case under Chapter 13 of the Bankruptcy Code.

2. The Chapter 13 plan was filed August 7, 2017, and confirmed on August 25, 2017. An Order confirming Chapter 13 plan was enter on August 28, 2017.

3. On August 1, 2017, a claim was filed by United Consumer Financial Services in the amount of \$669.56 (\$600 as secured and \$69.56 as unsecured). The United Consumer Financial Services supporting documentation indicates that the debt is for the purchase of a Kirby vacuum cleaner.

4. Mr. Smith no longer owns the collateral and the confirmed plan does not provide to pay this claim as secured debt. The Trustee has no authority to pay the claim as secured and must pay the claim as unsecured.

WHEREFORE, the Trustee respectfully requests this Court to

- A. disallow the above-referenced claim as a secured claim in the amount of \$669.56 for purposes of the plan, and allow it as an unsecured claim on the amount of \$669.56; and
- B. grant any other relief as the Court deems just.

DATED this 1 day of May, 2018.
Rochester, NY

/s/
George M. Reiber
Chapter 13 Trustee
3136 S. Winton Road
Rochester, NY 14623
(585) 427-7225

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NEW YORK
ROCHESTER DIVISION

In re: Michael Vincent Smith,) Case No. 17-20702-PRW
)
) Chapter 13
Debtor(s).)

ORDER

Upon Trustee's motion objecting to claim, the matter having duly come before this Court on June 14, 2018, at 10:00 a.m., after notice to all parties in interest, no one having opposed to the herein objection to the claim of United Consumer Financial Services (UCFS Kirby Cleaning Services) (Claim #26, Court Claim #3) for \$669.56 and the Court having considered the objection and determined the sufficiency of the claim, it is hereby

ORDERED, that pursuant to 11 U.S.C. §502 (b) (1), the claim is:

| | |
|-------------------|--|
| <u> </u> | DISALLOWED |
| <u> </u> | ALLOWED AS A TIMELY FILED CLAIM IN THE AMOUNT OF \$ <u> </u> |
| <u> </u> | ALLOWED AS A TARDILY FILED CLAIM IN THE AMOUNT OF \$ <u> </u> |
| <u> X </u> | OTHER –The claim in the amount of \$669.56 is disallowed as secured and allowed as unsecured in the amount of \$669.56 for purposes of the confirmed plan at ECF No. 20. |

Dated: _____
Rochester, New York

HONORABLE PAUL R. WARREN
U.S. BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NEW YORK
ROCHESTER DIVISION

In re: Vincent Michael Smith,) Case No. 17-20702-PRW
)
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AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
COUNTY OF MONROE) SS.:

Doreen Sharp, being duly sworn, deposes and says:

That deponent is not a party to this action, and is over 18 years of age and resides in the County of Monroe and State of New York.

That on May 1, 2018 deponent served the within Notice and Motion Objecting to Claim **on the following persons or persons authorized to accept service of process,** at their respective addresses:

Vincent Michael Smith
40 Rumsey Street, Apt #102
Bath, NY 14410

United States Trustee
100 State Street, Room 6090
Rochester, NY 14614

Susan Duke, Esq.
3407 Rochester Road
Lakeville, NY 14480

United Consumer Financial Services *
UCFS Kirby Cleaning System
Mr. Joe Francesconi, President
865 Bassett Road
Westlake, OH 44145

United Consumer Financial Services
UCFS Kirby Cleaning System
3936 E. Ft. Lowell, Suite 200
Tucson, AZ 85712

***mailed by certified mail**

The above addresses being the address designated by said person for that purpose by depositing a true copy of same enclosed in a post- paid properly addressed wrapper, in a post office depository under the exclusive care and custody of the United States Postal Service within New York State.

Sworn to before me this
__1__ day of May, 2018

/s/ _____
Doreen Sharp

/s/ _____
Louise M. Caputo, Notary